

## **EXHIBIT B**

February 19, 2004

JOHN WARTA, VOLUME I

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

--oOo--

In re: GST TELECOM INC., )  
et al., )  
Debtors, )  
GST TELECOM, INC., et al., )  
Counterplaintiffs, )  
vs. )  
JOHN WARTA, )  
Counderdefendant. )

Case No. 00-1982 (GMS)

DEPOSITION OF JOHN WARTA

Volume I, Pages 1 to 196

Taken in Behalf of Counterplaintiffs

Thursday, February 19, 2004

Reported By:  
Janis Brown, CSR, RPR

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1 BE IT REMEMBERED that the deposition of JOHN  
2 WARTA was taken in behalf of the Counterplaintiffs,  
3 pursuant to the Oregon Rules of Civil Procedure, before  
4 Janis Brown, a Certified Shorthand Reporter for Oregon  
5 and Registered Professional Reporter, on Thursday,  
6 February 19, 2004, commencing at the hour of 10:05 a.m.,  
7 in the law offices of KENT CUSTIS, 1500 S.W. Taylor, in  
8 the City of Portland, County of Multnomah, State of  
9 Oregon.

10  
11 --o0o--

12  
13 APPEARANCES:

14  
15 Attorney for Counterplaintiffs:  
16 LATHAM & WATKINS  
17 By: William J. Gibbons  
18 -and-  
19 Danielle Kemp  
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20 Attorney for Counterdefendant:  
21 KENT CUSTIS  
22 By: Christopher H. Kent  
1500 S.W. Taylor  
Portland, OR 97205

23 Also Present: Bruce D. Becker  
24  
25

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1 JOHN WARTA  
2 called as a witness in behalf of the  
3 counterplaintiffs, being first duly sworn,  
4 is examined and testifies as follows:  
5  
6 EXAMINATION  
7 BY MR. GIBBONS:  
8 Q. Mr. Warta, my name is Bill Gibbons. We met  
9 last year and again this morning before convening the  
10 deposition.  
11 As you know, I represent GST, various GST  
12 companies who are debtors in bankruptcy in the district  
13 of Delaware. In particular I represent GST in connection  
14 with the claim that you have filed in that bankruptcy  
15 proceeding, the objection to that claim and the  
16 counterclaim filed by GST against you. We are here to  
17 take your deposition with respect to those matters. I  
18 know you've been deposed before, because I've reviewed  
19 some of the transcripts, but if you'll indulge me I'll  
20 set up some of what I'll call the ground rules and make  
21 sure we're on the same page in this regard. If you have  
22 any questions about it, you can ask me and we'll try to  
23 resolve them.  
24 First of all, and probably most importantly, I  
25 would ask that you allow me to finish my question before

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1 beginning your answer. It's helpful to all of us to have  
2 a readable transcript, but probably most immediately it's  
3 helpful to Janis, who doesn't have to decide whose words  
4 to take down as we're both speaking. I will try to show  
5 you the same courtesy. I will try not to interrupt your  
6 answers when you're giving them. Of course, I understand  
7 it's a natural human tendency at some point in time to  
8 talk over somebody as they're coming to the end of a  
9 thought, so we both could make a mistake. If I stop you  
10 in that regard and suggest that you let me finish the  
11 question, I'm only doing it for purposes of making sure  
12 we have a clean transcript. I don't mean any rudeness to  
13 you.  
14 So far are we okay?  
15 A. As far as I know.  
16 Q. Well, I'm sure Mr. Kent will jump in if he has  
17 a problem with anything I say.  
18 If I ask you a question that you don't  
19 understand, tell me and I will try to rephrase it and see  
20 whether we can reach an understanding. If at any point  
21 in time you need a break, tell me, we can do that. The  
22 only thing that I'd ask is if there's a question pending  
23 that you complete your answer to that question before  
24 taking a break. If at any point during the course of the  
25 deposition you realize that an answer you gave was either

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1 Q. 1996?

2 A. I think that's right. I think the auctions  
3 took place the summer, the re-auctions took place in  
4 the summer.

5 Q. You would expect that that authorization and  
6 strategy would be reflected in the board minutes, right?

7 A. I would not necessarily expect that because  
8 this was a fairly small amount of money compared to the  
9 overall budget at the point in time.

10 Q. What you're saying is while it was discussed in  
11 a board meeting in May of '96, it may not have worked its  
12 way into the minutes because 5 or 6 million dollars at  
13 that point in time didn't cross a materiality threshold;  
14 is that right?

15 A. I think the issue was we didn't know whether it  
16 was five or two in May of '96. We didn't know exactly  
17 what licenses the FCC was going to auction that were  
18 overlaying our network. Because of that how can you seek  
19 preapproval or advanced approval in an amount that is not  
20 determined yet, because we didn't know at that point in  
21 time what market -- we had an idea. We had no ideas  
22 which ones would actually get to the auction.

23 Q. As a theoretical matter, though, you can seek  
24 board approval up to some dollar amount limit. Did you  
25 do that?

1 them and didn't need to make copies of them, but the  
2 first page identifies the date of the meeting and page  
3 two identifies the portions of the minutes that I want to  
4 ask you about.

5 A. Okay.

6 Q. Let me direct your attention to page two, the  
7 last substantial paragraph there which discusses, as it  
8 puts there, an arrangement between the company and  
9 MagnaCom, which it identifies as a corporation owned by  
10 Mr. Warta, which was true, right?

11 A. Well, MagnaCom was owned by Pacwest Network,  
12 Inc., and GST had specific rights related to Pacwest  
13 Network, Inc., and then that impacted the true ownership  
14 of that.

15 Q. What rights did GST have with Pacwest Network,  
16 Inc.?

17 A. You should probably look at that agreement, but  
18 it provided GST specific rights in terms of transfer of  
19 licenses that might be held in that entity from Pacwest  
20 Network, Inc. to another entity that GST identified  
21 subsequent to my termination.

22 Q. The licenses we're talking about are PCS  
23 licenses?

24 A. They are wireless licenses held by that  
25 entity. And that is an agreement that was put in place

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1 A. I think we had that through the executive  
2 committee authorization, so that wasn't an issue.

3 Q. But the executive committee authorization was  
4 not preapproved by the board?

5 A. Again, the executive committee had authority  
6 levels and we felt this was within the authority levels  
7 that were available to the executive committee at the  
8 time.

9 Q. Were there specific dollar amount authority  
10 levels for the executive committee?

11 A. I think there was from time to time varying  
12 dollar levels or dollar amounts. The board entrusted us  
13 and empowered us to be able to move forward. This is  
14 also in a period of time in which we're transitioning  
15 from weekly, monthly to quarterly meetings at the board  
16 level, and that's what caused the creation of the  
17 executive committee.

18 MR. GIBBONS: I'll ask you to mark this as, I  
19 think, Exhibit 5.

20 (EXB 5 marked.)

21 MR. GIBBONS: Q. Mr. Warta, let me show you what  
22 we've marked as Deposition Exhibit 5, which are two pages  
23 of minutes of the meeting of the finance committee of GST  
24 Telecommunications, Inc. held on August 1st, 1996. These  
25 aren't the complete set of minutes because we didn't need

1 at the formation of GST Telecom.

2 Q. Give me your understanding of the material  
3 terms of that agreement between GST and Pacwest Network,  
4 Inc.

5 A. That agreement caused me to transfer those  
6 licenses held or ownership held in those licenses to  
7 another entity following my termination and GST would be  
8 required to nominate the company and Pacwest would be  
9 required to transfer.

10 Q. The consideration for that was what?

11 A. It was part of our original deal.

12 Q. So the consideration was stock in GST  
13 Telecommunications, Inc.?

14 A. It was part of the original deal. We agreed to  
15 do that to accommodate GST's inability to hold the  
16 licenses directly themselves.

17 Q. The inability of GST to hold the licenses  
18 directly themselves was attributable to foreign ownership  
19 requirements?

20 A. It was attributed to two things: One, foreign  
21 ownership; two, lack of a petition when things got better  
22 by GST to try to get FCC approval to transfer those  
23 things.

24 Q. There's no guarantee if they had made such a  
25 petition it would have been approved, right?

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1 A. Well, history has proven that they were  
2 approved. You look at T-Mobile, which is now principally  
3 owned by Deutsche Telecom, you'll see the FCC over time  
4 has relaxed more and more of their ownership  
5 requirements.  
6 Q. To what degree have the ownership requirements  
7 been relaxed currently?  
8 A. Well, Deutsche Telecom owns T-Mobile. So it  
9 looks like a very substantial change, which has allowed  
10 Deutsche Telecom to participate heavily in the ownership  
11 of that company.  
12 Q. What about in 1996, what were the FCC  
13 limitations?  
14 A. It was 25 percent at that point in time, but  
15 there were always exceptions. But 25 percent was the  
16 standard rule. There are examples now that have come to  
17 light that showed some people had up to 49 percent. It  
18 could have become even more depending on the point in  
19 time.  
20 Q. Directing your attention again to page two of  
21 Exhibit 5, this reports that MagnaCom has succeeded in  
22 the auction bidding for C block PCS licenses for the  
23 cities of Eugene and Salem, Oregon; Tucson, Arizona;  
24 Albuquerque, New Mexico and Santa Fe, New Mexico. The  
25 aggregate price is approximately 108 million.

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1 It goes on to recite that the company  
2 anticipates that it will enter into a management and  
3 operations agreement.  
4 Down about halfway there is a sentence that  
5 reads, "In connection with the award of the licenses to  
6 MagnaCom, the company advanced to MagnaCom 5.4 million,  
7 which was utilized by MagnaCom as a deposit for the  
8 license with the Federal Communications Commission." Do  
9 you see that?  
10 A. Yes.  
11 Q. That was an accurate statement, right?  
12 A. I think this reflects what I had said earlier,  
13 that monies were advanced either directly to the FCC or  
14 for the benefit of MagnaCom to the FCC.  
15 Q. Right. And MagnaCom was now the prospective  
16 owner of licenses, correct?  
17 A. Right. And in this time frame, that's correct.  
18 Q. They were the prospective owners of licenses  
19 that you believe to be valuable property, right?  
20 A. Yes, I was being told that by the people who  
21 worked for me at GST that that was correct.  
22 Q. So what happened here was GST advanced 5.4  
23 million dollars utilized by MagnaCom to acquire the  
24 rights to licenses while MagnaCom was owned by you and a  
25 company wholly owned by you, right?

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1 A. I think that's correct. I think with all of  
2 the other agreements, I think that's correct.  
3 Q. Do you know whether there is any documentation  
4 of an authorization to spend 5.4 million of GST's money  
5 on the C block licenses to be owned by MagnaCom prior to  
6 these finance committee minutes?  
7 A. I think, again as I mentioned to you, the May  
8 meeting was a general discussion. Whether the board  
9 approved the actions of the executive committee in mass,  
10 I'm not aware of Irwin writing that in that particular  
11 fashion.  
12 Q. You're not aware of that you said?  
13 A. I'm not aware of him seeking blanket approval  
14 for all executive committee actions, but we clearly got  
15 board approval for that transaction as the board, in  
16 fact, did approve that after this August meeting.  
17 Q. But that wasn't my question, Mr. Warta. My  
18 question was whether prior to this finance committee  
19 meeting there is any documentation which reflects board  
20 or committee approval of spending 5.4 million dollars of  
21 GST's money to acquire licenses by MagnaCom, a company  
22 owned by you?  
23 A. I don't know if Irwin, in fact, wrote the  
24 minutes from the executive committee meeting that we've  
25 discussed earlier.

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1 Q. So you don't know that that exists, right?  
2 A. I don't know -- I just don't remember whether  
3 that exists or not. The board meeting was May, so what's  
4 a quarter from May? That would have been the next  
5 logical meeting. In between it was the executive  
6 committee's decisions within their authority level to  
7 act. And although --  
8 Q. I understand that you say the executive  
9 committee had authority to act. I'm not --  
10 A. I understand your question just to clarify if  
11 there's a document, and I don't know if there is a  
12 document. As I said, I just don't recall, other than  
13 minutes of the May meeting and the executive committee.  
14 And, again, I don't recall those specific minutes.  
15 Q. This August 1st, 1996 meeting of the finance  
16 committee may have been the first time that either the  
17 finance committee or the board was informed --  
18 A. No.  
19 Q. -- that -- you said "no" before I finished my  
20 question.  
21 A. I'll wait for you to finish.  
22 Q. I'll start again.  
23 August 1st, 1996 may have been the first time  
24 that either the finance committee or the board was  
25 informed specifically that the executive committee

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1 authorized advancing 5.4 million dollars of GST's funds  
 2 to acquire C block licenses to be held by MagnaCom, a  
 3 company owned by you, right?  
 4 A. No, that's not right. I think --  
 5 Q. Tell me where it's wrong.  
 6 A. Where it's wrong is you said all board members  
 7 weren't told until the next board meeting, and that's not  
 8 correct.  
 9 Q. I didn't say that.  
 10 A. Well, good, but that's the way I heard it.  
 11 Ian Watson was apprised. All of the key board  
 12 members were apprised in June in a document that you  
 13 probably have that I authored to notify them of our  
 14 intention to move forward on the basis that is described  
 15 here. And what Gordon Blankstein, who was chairman of  
 16 the board, told the rest of the board or not, I do not  
 17 know. So if Gordon picked up the phone and told them, "I  
 18 have authorized John to proceed on this," or, "Steve,  
 19 John and I have authorized him to proceed on this," I do  
 20 not know.  
 21 Q. I'm not asking about authorization of a  
 22 generalized strategy.  
 23 A. I understand that.  
 24 Q. My question is about authorization for the  
 25 advancement of 5.4 million dollars of GST's funds for

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1 MagnaCom.  
 2 A. I understand that.  
 3 Q. Okay. You're telling me that with respect to  
 4 specifically that advancement of 5.4 million of GST's  
 5 funds for MagnaCom the board or the finance committee was  
 6 informed prior to August 1st, 1996? I mean, I understand  
 7 you've said Blankstein and Irwin knew about it because  
 8 they were on the executive committee.  
 9 MR. KENT: Objection, compound. What question do  
 10 you want him to answer?  
 11 MR. GIBBONS: Q. First of all, the latter wasn't --  
 12 I was trying to short circuit what I anticipated to be a  
 13 non-responsive answer. I only offered it by way of  
 14 clarification.  
 15 MR. KENT: There you go again. Just ask your  
 16 question. You asked several questions and you argue with  
 17 him. I don't know what you want him to do --  
 18 THE WITNESS: And I haven't answered.  
 19 MR. KENT: You don't give him a chance to answer.  
 20 MR. GIBBONS: The record will reflect what it  
 21 reflects. This deposition has been stunning in its lack  
 22 of responsiveness, absolutely stunning.  
 23 MR. KENT: Okay.  
 24 MR. GIBBONS: We were getting along okay here for  
 25 the last 45 minutes or so, we were trying to stumble our

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1 way through missing each other and I offered a  
 2 clarification and you decided to jump in. Okay, that's  
 3 fine, but it's not productive.  
 4 MR. KENT: I'll need to state my objections. I'm  
 5 not going to agree with everything you said.  
 6 MR. GIBBONS: I'll withdraw the last question and  
 7 clarification.  
 8 Q. Are you telling me, Mr. Warta, that prior to  
 9 August 1st, 1996 either the finance committee or the  
 10 board was informed as a finance committee or as a board  
 11 that GST -- strike that.  
 12 A. The whole thing?  
 13 Q. The whole thing.  
 14 Did either the board or the finance committee  
 15 know before August 1st, 1996 that GST had advanced 5.4  
 16 million dollars to acquire licenses to be held by  
 17 MagnaCom, a company owned by you?  
 18 A. On June, I think 16th, a document was offered  
 19 by me and was sent to a number of members of the board,  
 20 many of whom are not only on the board but are on these  
 21 committees, describing what action we had intended to  
 22 take to pursue the PCS strategy. I think Ian Watson, who  
 23 was chairman of the finance committee, was, in fact, on  
 24 that document. I know Steve Irwin and Gordon Blankstein  
 25 were, because they were members of the executive

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1 committee. Whether Gordon Blankstein, who was chairman  
 2 of the company, picked up the phone and called the  
 3 finance committee, or called his neighbor, I don't know.  
 4 All I know is that moving forward in this regard was  
 5 approved by the executive committee and was subsequently  
 6 approved by the board.  
 7 Q. And your testimony is that this strategy was  
 8 approved and passed upon by those people as a result of  
 9 this June 16th document that you prepared?  
 10 A. My testimony is exactly as I've stated it, the  
 11 executive committee approved making the deposit with the  
 12 full knowledge that the money could be recovered if  
 13 anybody objected. The board subsequently approved the  
 14 transaction and at no time at any point in my period of  
 15 time of employment did anybody question that decision  
 16 until attorneys grabbed documents later.  
 17 Q. Prior to August 1st of 1996 did any of the  
 18 members of the board or the finance committee that you  
 19 have identified received a copy of your June 16th  
 20 document say they were in accord with the strategy?  
 21 A. When you say -- I don't know who you mean  
 22 "say" to. You mean say Gordon Blankstein --  
 23 Q. Indicate in any way they were in accord with  
 24 the strategy?  
 25 A. Yes.



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1 Q. How?

2 A. Steve Irwin, Gordon Blankstein agreed to move

3 forward.

4 Q. I know about them, because they're the members

5 of the executive committee. I'm going beyond Irwin and

6 Blankstein to other members of the board, other members

7 of the finance committee.

8 A. I don't know because I didn't talk to them

9 about it. It wasn't my job to communicate to them.

10 Q. Who was this June 16th document sent to that

11 you've identified?

12 A. I think I already told you who best I can

13 recall; Steve Irwin, Gordon Blankstein, I think Ian

14 Watson got a copy.

15 Q. Was that document specific as to the amount of

16 money that GST was going to advance for the C block

17 licenses?

18 A. I think it was in the realm of what we were

19 looking for, yes, I think that was correct. We didn't

20 know until some day substantially after that whether or

21 not we won any of the licenses.

22 Q. But you knew what they were going to cost if

23 you did win, right?

24 A. If we did win we didn't know what they were

25 going to cost until the bidding stopped, because --

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1 Q. When did the bidding take place?

2 A. The bidding took place between June and August,

3 as best I can recall.

4 Q. So on June 16th you couldn't have included the

5 amount of money that it was going to cost because you

6 didn't know, right?

7 A. I'm not sure. Again, I'm not certain. Without

8 seeing the document, I'm not sure.

9 Q. If this strategy had been approved earlier why

10 would the finance committee require, quote, "lengthy

11 discussion" as to whether they would authorize the

12 payment of additional funds beyond the 5.4 million that

13 you and Blankstein and Irwin as the executive committee

14 had approved?

15 A. Well, these licenses were only for a portion of

16 the networks that GST had moved into at the time. For

17 example, Tucson, Albuquerque, Santa Fe, Salem and Eugene,

18 Oregon. There were a lot of other areas that over time

19 GST may have wanted to acquire additional licenses. The

20 lengthy discussion came about when we didn't know when

21 the F block, which was the smaller block of license, a

22 smaller amount of band width, we didn't know when the FCC

23 was going to roll them out exactly. That would have

24 determined to the finance committee whether or not there

25 was funding available for additional advances in the

1 future.

2 Q. MagnaCom needed to come up with another 5.5

3 million dollars or it ran the risk of losing the 5.4,

4 correct?

5 A. MagnaCom was required to put down additional

6 capital.

7 Q. Right.

8 A. And the initial amount was a deposit.

9 Q. Right.

10 A. Once you won the licenses, I think you were

11 required -- I'm not the expert, Bob Olson's the expert --

12 but I think you were required to put up additional

13 funding once you won the licenses.

14 Q. So the advancement of the 5.4 million in effect

15 tied GST's hands with respect to the advancement of

16 future monies, or that ran the risk of that 5.4 million

17 going away, isn't that right?

18 A. The FCC has taken a different strategy with

19 different people at different times, so whether the 5.4

20 would have gone away or would have been refunded, I'm not

21 sure. I don't know.

22 Q. There was at least a risk that it would go

23 away?

24 A. There was the potential that 5.4 would or could

25 go away, and that was always a possibility that was

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1 explained to the executive committee early on.

2 Q. The executive committee again being you, Irwin

3 and Blankstein?

4 A. Yes. That whole --

5 MR. KENT: Go ahead. Finish your answer.

6 THE WITNESS: That whole strategy and direction was

7 also discussed in the May board meeting, May of '96, of

8 how the bidding worked, whether it worked, what you had

9 to do, what you could do, what you couldn't do. So all

10 of that had been discussed and laid out for the board, so

11 we didn't just suddenly walk in and say, "Well, you put

12 up the 5.4 and you're stuck with another 5.5."

13 MR. KENT: I'd like to interpose a restroom break

14 request.

15 MR. GIBBONS: Sure.

16 (RECESS TAKEN, 4:20 to 4:28 p.m.)

17 (EXB 6 marked.)

18 MR. GIBBONS: Q. Mr. Warta, let me show you what's

19 been marked as Exhibit 6 to your deposition, which is a

20 Limited Liability Company Operating Agreement of MagnaCom

21 Wireless, LLC. Do you see that?

22 A. Yes.

23 Q. Have you seen that document before?

24 A. I probably have.

25 Q. Let me direct your attention to page 29, which

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1 Q. And those licenses were a substantial asset,  
2 weren't they?  
3 A. No, they were all debt at that point in time.  
4 Q. They were a -- well, they were a substantial  
5 potential asset or you wouldn't have bought them, right?  
6 A. Well, yes and no. They were only an asset if  
7 you could have taken advantage of them and built out a  
8 network and infrastructure. Otherwise they look like 100  
9 million dollars of debt.  
10 Q. Right. But you didn't buy them without an  
11 intention to build out network and infrastructure,  
12 right?  
13 A. Not personally, no.  
14 Q. That was your intention, to build out network  
15 and infrastructure?  
16 A. No, I said it was not my intention to build out  
17 a network and infrastructure personally.  
18 Q. I didn't ask personally. I'm asking in  
19 connection with the acquisition of the licenses you  
20 intended to build out network and infrastructure in order  
21 to utilize the licenses, correct?  
22 A. GST intended to build out network and  
23 infrastructure.  
24 Q. Build out network and infrastructure at GST's  
25 expense?

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1 A. No.  
2 Q. Whose expense?  
3 A. It was subject to development of a business  
4 plan and getting additional funding from outside. That  
5 was the whole QualCom transaction.  
6 Q. Right. Were that to occur the licenses held by  
7 MagnaCom would in that event have substantial value,  
8 correct, or at least they could have?  
9 A. They may have. Again, there are a lot of  
10 companies in this arena that have come and gone.  
11 Q. That value would have been to you and your  
12 company in the event that the network and infrastructure  
13 was built out and GST was unable to exercise the option?  
14 A. Well, there is some bizarre potential that you  
15 could probably fashion that would have allowed me some  
16 how, some way to make some money, but that is not the  
17 case and it has never been the case, nor was it the case  
18 in the formation of this company.  
19 Q. When you say it wasn't the case, you mean you  
20 didn't make the money?  
21 A. No, that's not what I said. That misrepresents  
22 my testimony.  
23 Q. I'm asking. You said --  
24 A. We're talking about intention, and that's what  
25 I said. It was never my intent to make money on

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1 MagnaCom.  
2 Q. Okay.  
3 (EXB 7 marked.)  
4 MR. GIBBONS: Q. Mr. Warta, I'll show you what's  
5 been marked as Exhibit 7, which are part of the Minutes  
6 of the Special Meeting of the Board of Directors of GST  
7 Telecommunications, Inc. held on September 16 and 17,  
8 1996.  
9 First of all, do you know what makes this a  
10 special meeting as opposed to a regular meeting of the  
11 board?  
12 A. I don't know why it was deemed as being  
13 special.  
14 Q. Is a special meeting of the board called on  
15 other than a regular schedule?  
16 A. Could be.  
17 Q. Do you have any recollection as to why this  
18 meeting was called?  
19 A. I don't know. Without reading this and  
20 thinking back, I don't really know.  
21 Q. Let me direct your attention to what is marked  
22 on the bottom as page 20, although it's the second page  
23 of the exhibit. About halfway down it says, "The next  
24 order of business was a discussion of transactions  
25 between the company and MagnaCom Wireless." Do you see

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1 that?  
2 A. Yes.  
3 Q. It goes on to say, "MagnaCom is a limited  
4 liability company privately owned by John Warta."  
5 Roughly speaking, the same language was present in the  
6 finance committee minutes that are Exhibit 5. If  
7 MagnaCom was formed for the operation of GST, why don't  
8 the minutes say so?  
9 A. I don't know.  
10 Q. Instead they repeatedly say that MagnaCom is a  
11 limited liability company owned by you, right?  
12 A. Let me address that, because I do have a  
13 recollection.  
14 Q. Okay.  
15 A. My understanding throughout this period of time  
16 was that, and this I was getting from advice of counsel,  
17 from Steve Irwin and from the folks at Swidler and  
18 Berlin, was that it had to be very clear as to what  
19 control GST did or did not have of MagnaCom, otherwise we  
20 could forfeit the licenses. The documents were drafted  
21 in that fashion to ensure that the FCC did not come back  
22 after GST in the process of applying for and obtaining  
23 these licenses, just like GST concocted a scheme related  
24 to the microwave licenses in Hawaii, which may not have  
25 reflected the fact that GST was the principal beneficiary

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1 of the use of the microwave licenses.  
 2 Q. I don't mean to be unduly provocative here, but  
 3 are you telling me that the board minutes were prepared  
 4 in a manner to mislead the FCC?  
 5 A. The board minutes were prepared in a manner to  
 6 reflect a strict compliance with FCC requirements and to  
 7 ensure there was nothing in the minutes that caused the  
 8 ire of the FCC to raise any questions about the  
 9 acquisition of those licenses.  
 10 Q. But your position here in this deposition I  
 11 think is that MagnaCom was, in effect, formed for the  
 12 benefit of and control by GST, right?  
 13 A. That's correct. This document that we just  
 14 reviewed, document Exhibit 6, was prepared and developed  
 15 by GST's attorneys in consultation with GST's regulatory  
 16 and FCC attorneys. This document we're now looking at  
 17 was also prepared by Steve Irwin, who was a GST attorney.  
 18 Q. I understand that attorneys prepared them. But  
 19 did you have any concern at or about this time that what  
 20 was going on was misleading to the FCC?  
 21 A. There was nothing in here that is intentionally  
 22 misleading to the FCC. The issue and intent was to show  
 23 a separate entity that met the FCC test. It gave GST the  
 24 benefit of ownership of this company.  
 25 Q. How did GST have benefit of the ownership of

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1 this company when it could only exercise an option up to  
 2 24 percent of the company?  
 3 A. Those were issues that GST could effect then  
 4 change from time to time by --  
 5 Q. But can't control.  
 6 MR. KENT: Wait.  
 7 MR. GIBBONS: I apologize.  
 8 MR. KENT: Can the witness finish his answer?  
 9 THE WITNESS: By GST taking specific actions that  
 10 would have enabled it to exercise the entire option.  
 11 MR. GIBBONS: Q. But there is no guarantee that GST  
 12 could have taken any action which could have enabled it  
 13 to exercise the entire option, right?  
 14 A. I think there are two guarantees in life:  
 15 You're going to be born and you're going to die.  
 16 Everything else is subject to events.  
 17 Q. Right. But to say that, Mr. Warta, doesn't  
 18 mean that everything is of equal probability inbetween  
 19 birth and death. You're speaking of this GST option as  
 20 if GST could have taken a couple of steps and exercised  
 21 the option, but the fact is there were FCC regulations in  
 22 place which precluded GST from exercising the option  
 23 that's been crafted. Now, you understood that, right?  
 24 A. I understood what is written here and I'm not  
 25 the FCC attorney who advised the company, nor the

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1 corporate counsel who advised the company that this  
 2 transaction was appropriate and could be done.  
 3 I am telling you that I have offered on  
 4 numerous occasions to transfer these licenses to GST's  
 5 designate representative and they have not taken  
 6 advantage of that.  
 7 Q. Who did you make such an offer to?  
 8 A. Bob Ferchat in several e-mail documents.  
 9 Q. When?  
 10 A. After my termination.  
 11 Q. Before or after litigation was initiated?  
 12 A. Before.  
 13 Q. Prior to the time that you left the employ of  
 14 GST, you may have said this earlier, but were the  
 15 ownership rules relaxed with respect to foreign  
 16 ownership?  
 17 A. Prior to this I think they were to the extent  
 18 of allowing GST to acquire up to 49 percent on an  
 19 exception basis.  
 20 Q. I see. In other words, it had to be approved  
 21 by the FCC. You could apply for it, they might approve  
 22 it, they might not?  
 23 A. But the precedent was there to allow it. Now  
 24 today obviously in the Deutsche Telecom/T-Mobile case the  
 25 FCC has relaxed the rule.

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1 Q. But I was asking about the 1998 time period.  
 2 In the 1998 time period you could apply for up to 49  
 3 percent ownership, right?  
 4 A. Right.  
 5 Q. Back to, is Exhibit 7 the September 16, 17,  
 6 1996 minutes?  
 7 A. Yes.  
 8 Q. Back to Exhibit 7, second page of the exhibit  
 9 marked page 20. Towards the bottom again it says, "It  
 10 was noted that as a foreign corporation, the company was  
 11 ineligible to bid for and own such licenses since its  
 12 interest in any such bidding may exceed 24.9 percent. It  
 13 was the recommendation of the executive committee,  
 14 without Mr. Warta, that in view of the company's  
 15 ineligible status to acquire PCS licenses, it was to the  
 16 company's best interest to enter into agreements with  
 17 MagnaCom to purchase minutes of PCS capacity so that the  
 18 company can offer PCS as an enhanced service on its  
 19 networks." Do you see that?  
 20 A. Yes.  
 21 Q. Who first raised that issue of purchasing  
 22 minutes?  
 23 A. I think that was advanced by Steve Irwin, or it  
 24 may have actually come from the Swidler and Berlin firm  
 25 to Steve and then to us.

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